

**MINUTES OF THE PUBLIC HEALTH COUNCIL**

**Meeting of June 18, 2014**

**MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH**

**PUBLIC HEALTH COUNCIL  
MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH  
Henry I. Bowditch Public Health Council Room, 2<sup>nd</sup> Floor  
250 Washington Street, Boston MA**

---

**Docket: Wednesday, June 18, 2014, 9:00 AM**

---

**1. ROUTINE ITEMS:**

- a. Introductions
- b. Record of the Public Health Council Meeting May 14, 2014 **(VOTE)**

**2. DETERMINATION OF NEED**

- a. Project Number 2-4948 of Worcester Surgical Center involving a change in the ownership of a freestanding ambulatory surgery center. **(VOTE)**
- b. Project Number 3-3C34 of Steward Holy Family Hospital (Methuen) involving the transfer of ownership of Steward Merrimack Valley Hospital (Haverhill). **(VOTE)**
- c. Linden Ponds, Inc. request to transfer 140 out-of-service nursing beds to replace 132 existing beds at a nursing facility operated as part of a continuing care retirement community. **(VOTE)**

**3. FINAL REGULATION**

Proposed amendments to 105 CMR 100.000, *Determination of Need* **(Vote)**

**4. DRAFT REGULATION**

Proposed amendments to 105 CMR 700.000 related to prescriber use of the Online Prescription Monitoring Program **(Informational Briefing)**

**5. INFORMATIONAL PRESENTATIONS:**

- a. Commissioners Update
- b. The Public Health Council will meet in Executive Session as authorized by M.G.L. c. 30A, s. 21(a)(3) for the purpose of discussing strategy with respect to litigation, specifically Zogenix, Inc. v. Patrick et al., U.S. District Court, District of Massachusetts, 1:14-CV-11689-RWZ.

## Public Health Council

Presented below is a summary of the meeting, including time-keeping, attendance and votes cast.

**Date of Meeting:** Wednesday, June 18, 2014

**Beginning Time:** 9:25 am

**Ending Time:** 11:42am

### Attendance and Summary of votes

Board Member	Attended	Item 1b	Item 2a	Item 2a	Item 2c	Item 3
		Records of the Public Health Council Meeting May 14, 2014	Project Number 2-4948 Worcester Surgical Center	Project Number 3-3C34 of Steward Family Hospital	Linden Ponds	Final Regulation: Proposed Amendments to 105 CMR 100.000, <i>Determination of Need</i>
Cheryl Bartlett	Yes	Yes	Yes	Yes	Yes	Yes
Edward Bernstein	Yes	Yes	Yes	Yes	Yes	Yes
Derek Brindisi	Yes	Yes	Yes	Yes	Yes	Yes
Harold Cox	No	No	No	No	No	No
John Cunningham	No	No	No	No	No	No
Michele David	Yes	Yes	Yes	Yes	Yes	Yes
Meg Doherty	No	No	No	No	No	No
Michael Kneeland	Yes	Yes	Recusal	Yes	Yes	Yes
Paul Lanzikos	No	No	No	No	No	No
Denis Leary	Yes	Yes	Yes	Yes	Yes	Yes
Lucilia Prates-Ramos	Yes	Yes	Yes	Abstain	Yes	Yes
Jose Rafael Rivera	Yes	Yes	Yes	Yes	Yes	Yes
Meredith Rosenthal	Yes	Yes	Yes	Yes	Yes	Yes
Alan Woodward	Yes	Yes	Yes	Yes	Yes	Yes

Board Member	Attended	Item 1b	Item 2a	Item 2a	Item 2c	Item 3
		Records of the Public Health Council Meeting May 14, 2014	Project Number 2-4948 Worcester Surgical Center	Project Number 3-3C34 of Steward Family Hospital	Linden Ponds	Final Regulation: Proposed Amendments to 105 CMR 100.000, <i>Determination of Need</i>
Michael Wong						
Summary	10 members attended	9 Approved with votes	9 Approved with votes	9 Approved with votes	10 Approved with votes	10 Approved with votes

## PROCEEDINGS

A regular meeting of the Massachusetts Department of Public Health's Public Health Council (M.G.L. C17, §§ 1, 3) was held on Wednesday, June 18, 2014 at the Massachusetts Department of Public Health, 250 Washington Street, Henry I. Bowditch Public Health Council Room, 2<sup>nd</sup> Floor, Boston, Massachusetts 02108.

Members present were: Department of Public Health Commissioner Cheryl Bartlett (chair), Dr. Edward Bernstein Mr. Derek Brindisi, Dr. Michele David, Dr. Michael Kneeland, Ms. Lucilia Prates-Ramos, Mr. Jose Rafael Rivera, Mr. Denis Leary, Dr. Meredith Rosenthal, and Dr. Alan Woodward

Absent member(s) were: Mr. Paul Lanzikos, Dr. Michael Wong, Mr. Harold Cox, Dr. John Cunningham and Ms. Meg Doherty

Also in attendance was Attorney Tom O'Brien, General Counsel at the Massachusetts Department of Public Health.

Commissioner Bartlett called the meeting to order at **9:25 AM** and reviewed the agenda.

### ITEM 1: Minutes

#### a. Record of the Public Health Council Meetings of May 14, 2014

Commissioner Bartlett asked if there were any changes to the May minutes. Dr. Woodward made two points of clarification which were corrected.

Commissioner Bartlett asked for a motion to accept the minutes; Dr. Woodward moved, Dr. Bernstein seconded. All were in favor of acceptance with changes. Ms. Lucilia Prates-Ramos abstained.

### ITEM 2: DETERMINATION OF NEED

#### a. Project Number 2-4948 of Worcester Surgical Center involving a change in the ownership of a freestanding ambulatory surgery center. (VOTE)

Following the presentation, Commissioner Bartlett opened the floor for discussion.

Dr. Woodward questioned what is the volume of the number of cases or services? Kenneth Mitchell, Vice President of Worcester Surgical Center stated that there are about 6-700 cases per year.

After no other comments, Commissioner Bartlett asked for a motion to approve Project Number 2-4948 of Worcester Surgical Center involving change of ownership. Mr. Rivera moved to approve; the motion was seconded by Ms. Prates-Ramos. The DoN was approved with nine members voting in the affirmative. Dr. Kneeland recused himself.

b. Project Number 3-3C34 of Steward Holy Family Hospital (Methuen) involving the transfer of ownership of Steward Merrimack Valley Hospital (Haverhill). (VOTE)

Commissioner Bartlett took the testimony of Representative Brian Dempsey, Chairman of House Ways and Means at the start of the meeting. Chairman Dempsey spoke in support the transfer of ownership of Merrimack Valley Hospital as he believed that the transfer would allow access to a full range of health services in the community. This care provided by Steward would be typical of their high quality health care system. Additionally, Merrimack Valley Hospital is one of the largest employers and taxpayers in the area.

Following the presentation, Commissioner Bartlett opened the floor for discussion.

Dr. Woodward asked what the cost savings would be. Lester Schindel, President and CEO of Steward Holy Family Hospital stated that most cost savings are administrative, and that the hospitals can share department heads, labor resources, and staff to fill positions more efficiently than currently. There will also be improved financial viability for Merrimack Valley, which has struggled recently.

After no further comments, Commissioner Bartlett asked for a motion to approve Project Number 3-3C34. Mr. Leary moved to approve; the motion was seconded by Dr. Woodward. The DoN was approved with nine members voting in the affirmative. Ms. Prates-Ramos recused herself.

c. Linden Ponds, Inc. request to transfer 140 out-of-service nursing beds to replace 132 existing beds at a nursing facility operated as part of a continuing care retirement community. (VOTE)

Following the presentation, Commissioner Bartlett opened the floor for discussion.

Gretchen Mariachi, Chief of Staff, testified on behalf of Representative Garrett Bradley in support of the Linden Ponds project. A copy of this testimony is attached to the minutes.

Eva Marks, resident board representative of Linden Ponds, testified that the Linden Ponds community supports the purchase of beds that will permit MassHealth coverage to eligible residents, and that the Department has received letters of support for this request from Linden Ponds residents. Linden Ponds is an independent living center; when residents require nursing care, they prefer to stay in the community that they know. MassHealth will help a small number of residents meet some but not all of the costs.

Ms. Rosenthal asked how these changes would affect the daily operations, whether current residents will be grandfathered in under the 2004 contract arrangements. Adam Kane, Senior Vice President of Corporate Affairs explained that they are obligated to provide care to the current residents, and that current contracts will stand. Linden Ponds remains committed to the residents and provides them with the housing and care at the level needed. Those that want to apply for MA Health will be able to do so and will be permitted to remain in the care of Linden Ponds regardless of what they choose to do regarding MassHealth.

Dr. Woodward questioned Mr. Kane about those residents that signed the contract in 2004, which said that Linden Ponds will supply lifelong care if they run out of resources. Mr. Kane stated that a resident will have the ability to enroll in MA Health and if denied, the Linden Ponds Community will continue to bear the cost of care.

Dr. David asked Mr. Kane about new residents, and if residents aren't qualified for MassHealth and no have no other resources will they be required to move out of the community? Mr. Kane explained that Linden Ponds is a not for profit organization and will endeavor to provide care for its residents. There will be no expectation that residents have to go to another facility if they do not qualify for MassHealth

Dr. Bernstein questioned that when a new resident signs a contract, is there language to pressure them to apply for MassHealth? Mr. Kane stated that there is no requirement to pre-select MassHealth. Length of stay for residents in the community is 8-9 years before they require long term care in a nursing facility. Linden Ponds cannot require residents to apply for MassHealth, but will be able to say once we become a MassHealth certified facility, they may apply.

After no further comments, Commissioner Bartlett asked for a motion to approve the Linden Ponds request to transfer 140 beds. Dr. David made the motion, Mr. Rivera seconded. There were no recusals or abstentions.

### **ITEM 3: FINAL REGULATION**

#### Proposed amendments to 105 CMR 100.000, *Determination of Need* (Vote)

Following the presentation, Commissioner Bartlett opened the floor for discussion

Ms. Rosenthal questioned that while the changes before the Council were technical in nature, would there be changes coming from the state health plan. Carol Balulescu, Deputy General Counsel for DPH stated that these regulations are procedural. If the state health plan identifies other technologies or innovative ideas, then DPH would make necessary amendments, which could guide regulatory changes. If there were any suggestions that led to statutory changes, DPH would have to make those changes as well.

Dr. Woodward commented that on pg. 17 it states that there the time for DoN review and approval is limited to 4 months, yet the Health Policy Commission may request an independent cost analysis. Under such circumstances can the review and approval still be accomplished in 4 months?

Bernie Plovnick, DoN Program Director pointed out that the statutory changes reduced the DoN review period from 8 months to 4 months, but provides for a one-time extension when additional information is requested by the Program. If there is an independent cost analysis, then it also stops the 4 month requirement.

After no further comments, Commissioner Bartlett asked for a motion to approve the DoN regulations. Mr. Rivera made the motion, Ms. Rosenthal seconded; all approved.

### **ITEM 4: DRAFT REGULATION**

#### Proposed amendments to 105 CMR 700.000 related to prescriber use of the Online Prescription Monitoring Program (Informational Briefing)

At the conclusion of the presentation, Commissioner Bartlett opened the floor.

Dr. Bernstein asked what these regulations would mean in real terms for institutions with medical residents. Deborah Allwes, Bureau Director for Health Care Quality and Safety responded that delegates can be used and there will be parameters. We are not clarifying who a delegate is; there will be a work group who will clarify who a delegate may be.

Dr. David asked how prescribers will know that this is a requirement. Ms. Allwes explained that there will be an advisory group, convened once a year, to determine if there is a medication that should have special criteria around them, and then Commissioner will make final determination. Once finalized a circular letter will be sent out in the usual manner including to associations and MCSR registrations.

Mr. Brindisi wondered whether the advisory group would include someone from local public health. Ms. Allwes commented that there would in fact be a public health designee and that someone from academia could be someone who has public health background.

Dr. Woodward made a recommendation regarding the exceptions, stating that there should be clarifications as restrictions shall not apply when providing services to hospice patients only.

Dr. Woodward inquired whether pediatricians were happy with 4 years- this was under consideration and looked at literature and spoke to Am. Pediatrics. Balance the time and position with the level of diversion among parents. People who have access to medications to be prescribed, and think it didn't occur before that age. Original regulations whenever it was a new patient; now it is prescribing for the first time.

Dr. David asked if those prescribing marijuana can they be registered with the PMP? Ms. Allwes stated that at this point, they are not able.

Ms. Rosenthal left the meeting at 11am.

**ITEM 5: INFORMATIONAL PRESENTATIONS:**

- a. Commissioners Update
- b. The Public Health Council will meet in Executive Session as authorized by M.G.L. c. 30A, s. 21(a)(3) for the purpose of discussing strategy with respect to litigation, specifically Zogenix, Inc. v. Patrick et al., U.S. District Court, District of Massachusetts, 1:14-CV-11689-RWZ.

At the conclusion of the council meeting, Commissioner Bartlett asked for a motion to enter into executive session to not return to public meeting. Mr. Leary moved to enter into executive session; Ms. Prates-Ramos seconded. A roll call was taken in which all members present voted to enter into executive session.

At the conclusion of the executive session, Commissioner Bartlett moved to conclude the meeting. Dr. Bernstein made a motion; Ms. Prates-Ramos seconded.

**The meeting adjourned at 11:42 AM on a motion by and passed unanimously without discussion.**

**LIST OF DOCUMENTS PRESENTED TO THE PHC FOR THIS MEETING:**

1. Docket of the meeting
2. Minutes of the Public Health Council Meeting of May 14, 2014
3. DoN Pending List
4. Determination of need project memos
5. Project Number 2-4948 of Worcester Surgical Center involving a change in the ownership of a freestanding ambulatory surgery center.
6. Project Number 3-3C34 of Steward Holy Family Hospital (Methuen) involving the transfer of ownership of Steward Merrimack Valley Hospital (Haverhill).
7. Linden Ponds, Inc. request to transfer 140 out-of-service nursing beds to replace 132 existing beds at a nursing facility operated as part of a continuing care retirement community.
8. Testimony of Representative Garrett Bradley
9. Final Regulation- Proposed amendments to 105 CMR 100.000, *Determination of Need*
10. Draft Regulation-Proposed amendments to 105 CMR 700.000 related to prescriber use of the Online Prescription Monitoring Program
11. Commissioners Update Power point

Commissioner Cheryl Bartlett, Chair